

REMARKS

This amendment is being filed in response to the Office Action dated September 19, 2005. In that Action, the Examiner objected to the Abstract as being too long. Claim 18 was rejected under 35 U.S.C. §102(b) as being anticipated by Hayday. Claim 26 was rejected under §102(b) as being anticipated by Eslambolchi. Claims 1-2, 4-5, 9-10, 12-13 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hayday in view of Minarovic ('279). Claims 3, 11 and 20 were rejected under §103(a) as being unpatentable over Hayday in view of Minarovic and Clark. Claim 27 was rejected under §103(a) as being unpatentable over Eslambolchi in view of Hayday. Claims 6-8, 14-17 and 21-24 were indicated as being allowable if properly rewritten, and Claim 25 was allowed.

With respect to the objection to the abstract, Applicant has amended the abstract to bring the word count under 150.

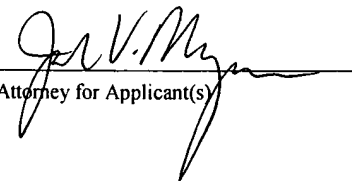
With respect to the §102(b) and 103(a) rejections, Applicant would respectfully submit that neither Hayday nor Eslambolchi can anticipate the present invention because Hayday fails to teach a visual indicator attached to an upper end of a tubular marker body, and Eslambolchi fails to disclose burying a tracker having an electronic marker. Hayday has a tubular casing and a radio beacon that is located inside the case, but the ostensible visual indicator feature of that device is not attached to the upper end of the casing. Rather, Hayday's visual indicator (the collapsible, self-erecting tower) is attached at a lower portion of the casing. The telescoping support tower is secured at its base (reference numeral 20f of Hayday) to the interior plate (reference numeral 21). This plate 21 is located at the lower end of the casing, not at its top (near cap 14), and thus the visual indicator is not "attached to said upper end of said tubular marker body" as recited in Claim 18.

Eslambolchi does not utilize any electronic marker that is buried or otherwise co-located with an obscured object. Eslambolchi records GPS coordinates of an object by using a GPS reading device (reference numeral 32 of Eslambolchi) which is attached to the plow carriage of the machinery being used to deploy the object (pipe or cable). Eslambolchi specifically avoids the use of later electronic location (see column 4, lines 4-8), and thus does not teach "burying a tracker at the particular field location" or "locating the tracker by sensing the electronic marker at the vicinity of the tracker with an electronic receiver" as recited in Claim 26.

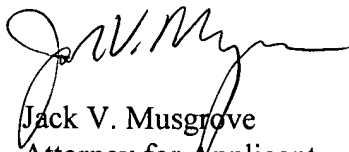
The foregoing arguments apply to the §103 rejections as well, since each of those rejections relies on Hayday or Eslambolchi (or both). Neither Minarovic nor Clark disclose or suggest a surface tracker having a tubular body with an electronic marker, and a visual indicator that extends from an upper end of the tubular body, whereby the marker can be planted firmly in the earth and allow for future electronic location along with a visual indicator which appears above-ground. Accordingly, one skilled in the art would not be motivated to combine the references in the manner suggested.

Notwithstanding the foregoing, and to expedite the prosecution of this application, Applicant has amended Claim 1 to incorporate the recitations of Claim 6, amended Claim 9 to incorporate the recitations of Claim 14, and amended Claim 18 to incorporate the recitations of Claim 21. Since Claims 6, 14 and 21 were allowable, amended Claims 1, 9 and 21 (and all claims depending therefrom) are now likewise allowable. Claims 6, 14 and 21 have accordingly been deleted, and the dependencies of Claims 7-8, 15-16 and 22-24 have been amended for consistency. Claims 26 and 27 have also been deleted, placing the case in condition for allowance.

Applicant has made a diligent effort to advance the prosecution of this application by amending claims, deleting others, and pointing out with specificity how the claims as presented patentably define the invention over the prior art of record. In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

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| I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Mail Stop Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on December 19, 2005. | |
|  | <u>Dec. 19, 2005</u> |
| Attorney for Applicant(s) | Date of Signature |

Respectfully submitted,


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